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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,

12 Respondent,

13 v.

14 JASON ELLIS SMITH,

15 Movant.
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No. 2:98-cr-0009 KJM CKD P

ORDER

17 Movant, a federal prisoner proceeding through counsel, has filed a motion to vacate, set
18 aside, or correct his sentence pursuant to 28 U.S.C. § 2255. The matter was referred to a United
19 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

20 On October 2, 2017, the magistrate judge filed findings and recommendations, which
21 were served on movant and which contained notice to movant that any objections to the findings
22 and recommendations were to be filed within fourteen days. (ECF No. 122.) Movant has filed
23 objections to the findings and recommendations. (ECF No. 123.)

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
25 court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the
26 findings and recommendations to be supported by the record.

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1 The court writes separately to clarify that movant robbed a credit union, one of the
2 institutions identified in 18 U.S.C. § 2113(a). The court further notes that since the findings and
3 recommendations and movant's objections were filed, the United States Court of Appeals for the
4 Ninth Circuit has specifically held that armed bank robbery as criminalized by 18 U.S.C. §
5 2113(a) is a crime of violence under 18 U.S.C. § 924(c). *United States v. Watson*, 881 F.3d 782
6 (9th Cir. 2018). The *Watson* panel explicitly rejected the argument "that bank robbery by
7 intimidation does not meet the *mens rea* requirement for a crime of violence." *Id.* at 785. The
8 *Watson* panel also held that the offense of "bank extortion" is one of two "divisible" offenses
9 included in 18 U.S.C. § 2113(a) and that where, as here, the defendant was convicted of armed
10 bank robbery rather than bank extortion, the court "need not decide whether bank extortion
11 qualifies as a crime of violence." *Id.* at 786. *Watson* is binding precedent and controls the
12 disposition of movant's § 2255 motion, which must be denied.

13 Movant requests a certificate of appealability. *See* ECF No. 123 at 5. Rule 11 of the
14 Rules Governing Section 2255 Proceedings in the United States District Courts requires the
15 district court to "issue or a deny a certificate of appealability when it enters a final order adverse
16 to the applicant." Rule 11, 28 U.S.C. foll. § 2255. A certificate of appealability may issue under
17 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a
18 constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of
19 appealability indicating which issues satisfy the required showing or must state the reasons why
20 such a certificate should not issue. Fed. R. App. P. 22(b). For the reasons set forth in this order,
21 movant has not made a substantial showing of the denial of a constitutional right. Accordingly,
22 movant's request for a certificate of appealability will be denied.

23 In accordance with the above, IT IS HEREBY ORDERED that:

24 1. The findings and recommendations filed October 2, 2017 (ECF No. 122), are adopted
25 to the extent consistent with this order;

26 2. Movant's June 17, 2016 motion to vacate, set aside or correct sentence under 28 U.S.C.
27 § 2255 (ECF No. 114) is denied;

28 3. Movant's request for a certificate of appealability is denied; and

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4. The Clerk of the Court is directed to close the companion civil case No. 2:16-cv-3067
KJM CKD.
DATED: April 25, 2018.


UNITED STATES DISTRICT JUDGE